



City of Rockville

## MEMORANDUM

May 21, 2008

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Planning Commission Recommendation on Text Amendment Application  
TXT2007 – 00219 and Comprehensive Map Amendment MAP2007-00101;  
Comprehensive Revision to the Zoning Ordinance and Zoning Map

The Planning Commission held a public hearing on the proposed amendments recommended by RORZOR (Representatives of Rockville Zoning Ordinance Review) on January 23 and January 30, 2008. Testimony was received both at the hearing and in writing. The Planning Commission closed the public hearing record on March 28, 2008.

Since the close of the public hearings in January, numerous worksessions have been held with the planning staff to review all of the comments and correspondence received on this matter. The Planning Commission considered Text Amendment Application TXT2007 – 00219 and Comprehensive Map Amendment MAP2007-00101 at its meeting on Wednesday, May 21, 2008. As a result of these deliberations, the Planning Commission recommends approval of the proposed draft ordinance and zoning map with modifications. These recommended modifications are set forth below.

### General Changes

There have been many editorial changes to the draft text, most of which correct typos or provide greater clarity. In general, all of the proposed changes are indicated with a strike-through of the old language and underlining of the revisions. The final changes recommended by the Commission are indicated with a double underline. There has also been some reorganization. The sign measurement provisions included in Article 3 of the October draft have been relocated into Article 18 with the rest of the sign regulations. Also, the provisions for approval of a major home-based business enterprise special exception have been moved to Article 15 with the rest of the special exception provisions.

Within the Definitions contained in Article 3, some new definitions have been added, and some others renamed and relocated alphabetically. For instance, "Building, height of" has been moved to the Terms of Measurement section. A revised definition for "Family" is proposed which attempts to reflect the modern reality of how people live as a family today. A definition for

“Public Use Space” is proposed to reflect the proposed design standards contained within the new Mixed-Use Zones.

The Mayor and Council should recognize the differences between permitted uses and conditional uses as indicated within the various land use tables. A permitted use is one that is allowed without reservation anywhere within the zones where it is allowed. A conditional use is one that is permitted but with certain conditions, usually related to the location or the extent of the use. If these conditions are met, the use is then allowed. This is not new, as the current ordinance also has conditional uses, which are shown in the land use tables thus: (P). The parentheses indicate that there are additional regulations attached to this use, which are elsewhere in the ordinance. The draft ordinance generally lists the conditions in the tables, or as footnotes at the end of the tables for ease of use.

It should also be noted that the terms “public hearing” and “public meeting” are alternatives used throughout the draft zoning ordinance. The term “public hearing” is used when State law expressly requires a “hearing” with notice to be published in a newspaper of general circulation. The term public meeting is used to refer to meetings of the Planning Commission and other Approving Authorities where specific development proposals are considered and the public is given an opportunity to be heard on the application. The zoning ordinance sets forth the specific notice to be given as to items to be considered at a public meeting. Publication in a newspaper is generally not required.

### **Specific Issues**

#### **Home-based Business Enterprises (HBBEs)**

One topic that generated considerable testimony at the hearings involved the proposed regulations for HBBEs (currently, Home Occupations). Much of the testimony concerned the potential intrusion into the operation of the HBBE by requiring maintenance of a log of visitors for enforcement purposes. Related to that was the requirement that all HBBEs register with the City, regardless of the scale of the business. The changes recommended by the Commission are as follows:

- Create a No-Impact HBBE that does not require any registration, with a limit of up to 10 visits per week to the house.
- For minor HBBEs, retain the registration requirement, and eliminate the requirement to maintain a visitor log. Enforcement requirements are eased.
- Major HBBEs that involve more than 20 visits per week to the house and/or have up to 2 non-resident employees require approval of a special exception. The standards and requirements for the special exception have been moved to Article 15 (Special Exceptions).
- Limit use of HBBEs to no more than 49% of the gross floor area of the main dwelling. Allow the use of existing accessory buildings in connection with the HBBE, regardless of size.

### Stonestreet Avenue Zoning

Many of the businesses along Stonestreet Avenue testified in opposition to applying the Mixed Use Transition (MXT) Zone to the properties on the east side of North Stonestreet Avenue. The Commission considered these issues in detail during the worksessions. In response, the Planning Commission recommends that the Mixed Use Business (MXB) Zone be applied to all properties along Stonestreet Avenue currently zoned I-1. This is consistent with recommendations and intent of the East Rockville Neighborhood Plan, which contemplates retaining the existing businesses while encouraging an eventual transition to a more mixed-use area. This change also has the support of the adjoining neighborhood. The Commission notes that no comment or testimony was received on this issue from the residents of the Lincoln Park area, which is just to the north of the area of the recommended rezoning.

Connected with the Stonestreet Avenue issue is the matter of parking requirements. Many of the existing businesses don't have sufficient site area to accommodate all parking that would be required for many uses. To provide more flexibility in the uses available for these and similar sites, the Commission recommends that the Mayor and Council consider creating a parking district and/or some other process by which on-street parking or other parking available to the public could count towards some of the parking requirements for areas like the Stonestreet corridor.

### Mixed Use Zones

There was much testimony that the development standards for the proposed new mixed-use zones were too rigid, and their application to existing development would create massive nonconformity issues. In general, the Commission agrees that there should be more flexibility in how the design and development standards should be applied, especially in the Transit District and Corridor District zones. The following is a summary of the changes recommended:

- Building heights

Building height minimums along the street frontage should be a guideline, rather than a standard in the MXTD (Mixed-use Transit District) and MXCD (Mixed-use Corridor District) zones. In the MXTD Zone, building heights along the street should be allowed up to 65 feet. There should not be a requirement for upper story setbacks. Height up to 120 feet is allowed other than along the street frontage. Height above 65 feet up to 120 feet may be allowed along the street frontage if recommended as suitable in the master plan, or if approved by the Mayor and Council as part of a project plan.

Building height in the MXTD Zone may be allowed up to 150 feet where recommended in the master plan or if approved by the Mayor and Council as part of a project plan. This additional height can only be approved with additional enhancements such as:

- The public use space requirement must be provided on the site;

- The building footprint cannot occupy more than 80% of the net lot area;
- The building design exceeds the urban design recommendations of the applicable Master Plan; and
- The building must be designed for maximum energy conservation and/or complies with any energy conservation standards set forth in this Code.

As part of this recommendation, the Commission recommends that the Mayor and Council look closely at other ways to achieve the desired goal of outstanding design in new development. The Mayor and Council should consider whether there are more definitive standards that would achieve the type of development the City wants, without being too subjective in the evaluation of project design.

As recommended, the added height up to 150 feet can be approved at the minimum front building line. The Commission did not directly address this aspect when considering the provisions for added height.

In the MXNC (Mixed-use Neighborhood Commercial) Zone, the building height standard is reduced from 50 feet to 45 feet. Additional height up to 65 feet is allowed where recommended in the master plan. This addresses the recommendations of the draft Twinbrook Neighborhood Plan for a height of up to 65 feet for the proposed MXNC area at Veirs Mill Road and Atlantic Avenue.

- Public Use Space

The Commission recommends making the public use space requirement 20% in all the mixed-use zones. On sites smaller than 40,000 square feet with no residential uses, the properties can elect to utilize the fee-in-lieu system to meet the entire requirement unless building height exceeds 65 feet. In that case, at least 10% of the requirement must be met on-site. For sites of 40,000 square feet or greater with no residential uses, a minimum of 10% of the public use space requirement must be met on-site. The balance may be met with the fee-in-lieu provisions. If residential use area included in a development, then at least 10% of the public use space requirement must be met on-site. Fee-in-lieu may be paid for the on-site requirements if certain circumstances are met.

The Commission recommends that in establishing the fee-in-lieu program the Mayor and Council make sure that the fee is set at a level that will generate substantial funds for land acquisition. While it is likely not feasible to generate all the funding needed, the fee-in-lieu should provide a substantial portion of the needed funding.

In the MXE (Mixed-use Employment) Zone, 10% of the public use space requirement should be provided on-site. The balance may be met via the fee-in-lieu system.

- Layback Slope

The Commission recommends that the 30-degree layback slope be applied only where the adjacent area in the residential zone is developed with single-family residential uses or townhouses. The intent of this provision when originally approved was to minimize the impact of commercial development on adjoining homes. In cases where there are no homes (such as schools, private clubs, vacant property and the like) there is no real need for this provision to apply. This would remove some current nonconformity issues, such as for properties along Rockville Pike that adjoin Woodmont Country Club. Also, with the application of the Park zone to the PD (Planned Development) Zone areas, the layback slope requirement does not apply in those areas.

There remains the potential future issue of what happens if the commercial development comes first, and the adjoining residentially zoned area redevelops with houses. The placement of the houses would technically bring the layback slope provision into play and potentially making the pre-existing commercial development nonconforming. The Mayor and Council should provide guidance on this issue.

- Sidewalks

The Commission concurs with the recommendations of the Department of Public Works that the sidewalk design standards for non-single-family areas in Article 17 be set as guidelines. The differing conditions of each block of street frontage, along with the character of the adjoining development and relative proximity to transit stations call for flexibility in how sidewalks are provided. There should be a normal minimum standard of 7 feet for tree lawn widths, as reflected in the Forest and Tree Preservation Ordinance, and a normal clear pedestrian path of 6 feet.

### Parking

The Commission recommends that limited parking be allowed in the front of buildings in the MXTD Zone where ground floor retail is provided. The Commission believes that convenient parking is necessary to the successful operation of such retail uses.

The Commission also recommends that most commercial uses in the MXTD and MXCD zones include maximum parking standards in order to limit the amount of “overparking” that would otherwise be allowed. In these cases, the minimum parking requirement set forth in the tables is also the maximum allowed. Additional parking for these uses is only allowed if the added spaces use a permeable surface, are provided via automated structures or in a parking structure, or if all of the required public use space is provided on-site.

The Commission recommends that there be no set limit on the amount of parking reductions that can be approved by the approving authority. These decisions should be made on a case-

by-case basis, depending on the nature of the development, its proximity to transit, or other good cause. Parking reductions should also be allowed in cases where the lots are so small that providing the full parking requirement would prevent redevelopment of the site. In the case of multi-family residential development, the Commission recommends a provision that allows for substantial reductions in the number of spaces that can be provided, including cases where there will be a “car-free by contract” provision for tenants in such developments.

The Commission also recommends that the Parking Design Standards, Sections 25.16.06 through 25.16.09, be relocated from the ordinance and placed in a separate design manual, similar to the Landscaping, Screening and Lighting Manual. This would allow greater flexibility to respond to changing standards for sizes of spaces, drive aisle widths, paving materials, and bicycle parking by allowing such changes to be made through resolution rather than requiring a text amendment.

Finally, the Commission strongly recommends that the Mayor and Council consider a policy to allow the creation of parking districts within the City. The ability of the City to provide public parking enhances the utilization of private properties, and should help reduce the impervious surface areas that result from the requirement that all off-street parking be provided on-site.

#### Residential Mixed Use Zone

The Commission notes that under the draft zoning ordinance there is no longer any provision for a residential planned unit development, similar to the current Planned Residential Unit special development procedure. Such a residential-oriented mixed-use zone might be needed if and when the private golf clubs redevelop. Since that eventuality appears to be distant, there is no urgency to create such a zone at this time. The more likely scenario would be to evaluate any proposed redevelopment at the time it is brought forward, and consider creating the zone at that time.

#### Site Plan Review

The Commission finds that the additional public outreach proposed as part of the site plan review and project plan review procedures is a good step towards increasing citizen involvement in the development review process. One change recommended as a result of input from the Historic District Commission to include an initial historic review at the earliest stage of the review process to insure that any potential historic sites are identified and can be addressed early in the process.

#### Historic Site Provisions

A number of changes and additions have been made in the provisions for administering historic sites and districts. The Historic District Commission proposed most of these. The changes primarily relate to eliminating the “50-year rule” for evaluating potential sites. The Historic District Commission will also have a role in the Site Plan Review process. In cases

where development projects propose demolition, an early evaluation will be done so that the property owner can be put on notice if there is a potential for historic designation.

### Signs

The Commission concurs with the planning staff that the sign provisions should be given a complete review in order to bring them up to date. However, the Commission recommends no changes in the sign provisions contained in Article 18 at this time. The comprehensive review would be a separate work program item that could commence following adoption of the current proposed ordinance.

### “Mansionization”

The Commission generally concurs with the provisions of the draft zoning ordinance with respect to the regulation of large houses in existing neighborhoods. The Commission does recommend that additional height between 35 and 40 feet might be acceptable if approved via site plan review by the Commission. Such added height should only be considered if it is for environmental reasons such as alternative energy generation, solar access, or other energy efficient measures.

Another issue that the Mayor and Council need to consider is the height measurement as it relates to the pre-existing grade. The draft ordinance requires that building height be measured from the pre-existing grade of the lot. However, the Public Works staff has raised a concern about cases where the lot slopes down from the street. It is their desire that the lots be graded in such a way that at least the front portion of the lot has storm water drain towards the street. This minimizes the potential impact of drainage onto other adjoining lots. However, requiring the regrading would affect the building height measurement, lowering the potential height. This is principally an issue with regard to new development, but it may affect additions and renovations and therefore bears further study.

### Planned Development Zones

The Planned Development (PD) Zones were recommended by the RORZOR Committee as a way to bring the various special development procedure projects into the zoning ordinance. The Committee had extended discussions about how best to treat those portions of these projects that have not yet received development approval, either through a use permit or detailed application. The issue is trying to balance the desire for having new development be consistent with the new mixed-use zone standards, while being cognizant of the conditions of the initial approval. The revisions that have been made in the final draft attempt to strike this balance. The revisions recommended for the mixed-use zone development standards help ameliorate some of the initial objections raised during the hearings before the Commission. However, this topic will need further considering by the Mayor and Council during the deliberations on the revised ordinance.

Master Plan Relationship

The Commission notes that there are some changes in the proposed comprehensive zoning based on the recommendations of the draft Twinbrook Neighborhood Plan. These changes are:

1. As noted above, reduce the normal allowable height in the MXNC Zone from 50 feet to 45 feet, but allow height up to 65 feet where recommended as suitable in the applicable master plan.
2. Apply the MXB Zone instead of the I-L Zone to the Avalon Bay property on Halpine Road near the Twinbrook Metro station.
3. Retain the R-60 Zone on the Taylor Property on Halpine Road.
4. The Commission also recommends that the site of the convenience store located at the intersection of South Stonestreet Avenue and Reading Avenue be placed in the R-60 Zone instead of the C Zone with the expectation that as a nonconforming use this site will eventually become residential.
5. Modifications to the “C” Commercial Zone: As a result of the changes noted below, the Commission recommends that the C Zone become a Mixed Use Commercial (MXC) zone. The MXC Zone is moved to Article 13, leaving only the Industrial zones in Article 12.
  - a. Apply the MXC Zone instead of the MXNC Zone to the Burgundy Park shopping center at the intersection of First Street and Baltimore Road.
  - b. In connection with the zoning changes, the Commission also recommends these changes to the MXC Zone:
    - i. Allow single-unit detached homes as a permitted use;
    - ii. Allow multi-family dwellings above the ground level;
    - iii. Do not permit sale of alcoholic beverages for off-site consumption where the property adjoins single-unit residential development zones.
6. The Commission did not recommend the additional height flexibility in the MXCD Zone that is recommended for the MXTD Zone. With the initiation of the comprehensive revisions to the Rockville Pike Plan, the Commission recommends that any further changes to the MXCD Zone await the final recommendations for development density in character that will result from the master plan process.



### Environmental Issues

The Commission has recommended some modifications to the allowable encroachments provisions of Article 9 in order to accommodate rooftop solar panels and accessory alternative energy structures in areas other than the rear yards. Floodplains are to be excluded from the calculation of density during the subdivision and development process. The Environment Commission has recommended some other changes, which are beyond the scope of the zoning ordinance at this time. The Commission strongly recommends that the Mayor and Council continue to consider a “Green Building” Ordinance. At such time as such an ordinance is approved, additional references may need to be added to the zoning ordinance through a text amendment.

### Nonconformities and Grandfathering

The Commission strongly recommends that existing development in the Mixed Use zones be treated as conforming under the provisions of the zone in effect immediately prior to the application of the new mixed use zones. The Commission finds that the potential financial impacts of creating large-scale nonconformities will likely have an adverse impact on these developments, and by implication have an impact on the City. Such developments could be repaired or rebuilt to their former extent if they suffer a major casualty event, such as fire, flood, wind, or other damage beyond the control of the property owner. Any extensions beyond 5 percent of the existing floor area must conform to the new zone standards, and if the development is to be redeveloped it must fully conform to the new standards. The Commission recommends that any nonconformities that exist under the current ordinance remain nonconformities under the revised ordinance.

A similar provision should also be applied to the Residential Moderate Density zones that allow multi-family development (RMD-15 and RMD-25), since there are several existing apartment projects in the City that do not meet some aspects (primarily density) of the new zones. This is important so as not to have an adverse impact on these projects, which provide an important affordable housing resource for the City.

Testimony was received from the Montgomery County Fire and Rescue Department requesting that they be designated an essential public service. As such, their installations should be exempt from the normal development standards of the zoning ordinance. The Commission believes that the added flexibility recommended in the mixed-use zones alleviates most of their concerns. However, the Mayor and Council may need to consider this issue further during their deliberations.

### Important Time Frames

The draft zoning ordinance contains the related but distinct concepts of implementation period, validity period and vesting. Each concept relates to the “life” of a development approval, but in very different ways.

The zoning ordinance provides for a limited period of time in which initial action (such as obtaining a building permit) must be taken to begin implementation of a development approval (such as a site plan approval), or the approval expires. In most instances, up to two extensions of this implementation period may be granted by the Approving Authority under certain conditions.

The validity period is the “lifespan” of a development approval. Once the initial implementation of a development approval has begun, there is a particular period of time in which all phases of the development must be begun or the approval expires with respect to the un-built portions of the approved plan. All phases of a site plan approval must commence within 8 years of the approval. A similar 8 year period applies to project plans, unless the Mayor and Council provides for an alternative validity period.

Vesting pertains to the right to a particular use or development, notwithstanding a change in the zoning ordinance. A valid site plan, project plan, or other development approval does not mean that the approval has vested so as to bar application of any change in the law. Under the draft zoning ordinance, a valid development approval that has not expired will not protect an approved development project from changes in the zoning ordinance unless implementation of the use or construction of the building has begun pursuant to valid applicable permits. If construction of some but not all of the component buildings of a development project have begun, only those buildings for which construction has begun will be deemed to be vested, and the remaining un-built portions of the approved project will be subject to the new zoning requirements. In other words, the requirements of vesting trump the validity period, unless in the adoption of the new zoning provisions the Mayor and Council preserve “grandfather” the entire approved project.

There also needs to be a clear understanding of the relationship of the Adequate Public Facilities Ordinance (Article 20) to the other provisions for approval periods. The APFO provides for the Approving Authority to establish a validity period for the APFO approval. Subsequent actions to implement the development do not need any further APFO analysis for the duration of the initial validity period. This validity period may extend beyond the normal 8-year validity period for implementation of multi-phase projects if the Approving Authority determines that the project will need additional time for implementation.

### Zoning Map Changes

The planning staff, in its January 11 staff report, identified a number of technical corrections to the proposed comprehensive zoning map, which the Commission concurs with. In addition, all of the public school sites are recommended for placement in the new Park Zone, although MCPS does not agree with this. Also, all of the City-owned park areas, including those within the proposed Planned Development Zones, are also recommended for placement in the Park Zone.

The initial recommendation for a Park Zone came out of the deliberations of the RORZOR Committee. The initial consideration was to apply the zone to all publicly-owned park areas within the City, outside of the proposed PD Zone areas. The final Committee recommendation was to also apply the Park Zone to all of the public school sites as well. The Commission

recommendation is to include all of the City-owned properties including within the PD areas, and all of the school sites in the Park Zone.

The following additional changes in the comprehensive zoning map are also recommended as shown on the proposed zoning map;

1. On Sheet C-3, the Rocklin Park Apartments between Spring Avenue and Frederick Avenue should be placed in the RMD-25 Zone to better reflect the density of the development.
2. On Sheets C-3 and D-3, as noted earlier, the areas currently zone I-1 along North Stonestreet Avenue should be placed in the MXB Zone instead of the MXT Zone.
3. On Sheet D-3 the following changes are recommended:
  - a. A portion of the property bounded by Maryland Avenue, East Montgomery Avenue, North Washington Street and East Middle Lane is incorrectly shown for the PD-DB Zone, and should be in the MXTD Zone.
  - b. The properties south of the Metro Station along South Stonestreet Avenue, currently zoned I-1, should be placed in the MXB Zone instead of the MXNC Zone.
  - c. As noted above, the site at the intersection of South Stonestreet Avenue and Reading Avenue, currently in the C-1 Zone, should be placed in the R-60 Zone.
4. On Sheets D-3 and D-4, the Burgundy Park shopping center should be placed in the MXC Zone instead of the MXNC Zone.
5. On Sheet E-2, the property owned by the State Highway Administration, but not a part of the Falls Road interchange, should be placed in the R-150 Zone.
6. On Sheet E-3, the former Hungerford Elementary School site should be placed in the Park zone.
7. On Sheets E-4 and F-4, the properties currently in the I-1 Zone along Halpine Road (the Avalon Bay site) should be placed in the MXB Zone instead of the I-L Zone.
8. Also on Sheets E-4 and F-4, a small strip of railroad/Metro right-of-way should not have zoning shown on it, consistent with the policy of not showing zoning within public rights-of-way.
9. On Sheet F-4, the properties immediately north of Halpine Road should be placed in the MXTD Zone instead of the MXCD Zone due to their proximity to the Twinbrook Metro Station.
10. Where applicable, the C Zone becomes the MXC Zone.

Finally the Commission strongly recommends to the Mayor and Council keep the zoning ordinance adoption process moving forward as quickly as possible. If requested, the Commission will make itself available to review the recommended modifications with the Mayor and Council and answer any questions that the Mayor and Council may have regarding the final draft revised ordinance and/or map amendment.

Therefore, on motion of Commissioner Hill seconded by Commissioner Tyner, the Commission voted to recommend approval to the Mayor and Council of Text Amendment Application TXT2007– 00219 with the modifications shown in the final draft, dated May 21, 2008. The

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Commission also recommends approval of Comprehensive Map Amendment MAP2007-00101 with the modifications shown in the attached maps, dated May 21, 2008. The motion passed on a vote of 7 to 0.

cc: Planning Commission  
Case File

Attachments:

Final Draft Zoning Ordinance – May 21, 2008

Recommended Comprehensive Zoning Maps – May 21, 2008